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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/851,614	05/08/2001	Yashwant M. Deo	MXI-166	4957

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EXAMINER	
EWOLDT, GERALD R	

ART UNIT	PAPER NUMBER
1644	

MAIL DATE	DELIVERY MODE
05/17/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

09/851,614

Applicant(s)

DEO ET AL.

Examiner

G. R. Ewoldt, Ph.D.

Art Unit

1644

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 28 March 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☐ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).


4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☒ Applicant's reply has overcome the following rejection(s): See Continuation Sheet.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 94 and 99-107.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.


5/16/07
G.R. EWOLDT, PH.D.
PRIMARY EXAMINER

Continuation of 5. Applicant's reply has overcome the following rejection(s): rejections over the recitation of "conservative sequence modifications" and the rejection of Claims 94, 99, 105 and 107 for lack of enablement.

Continuation of 11. does NOT place the application in condition for allowance because: As set forth above, the rejections over the recitation of "conservative sequence modifications" have been withdrawn.

Rejections under 35 U.S.C. 112, first paragraph, for inadequate written description (including the introduction of new matter into the claims) and lack of enablement are maintained for the reasons of record.

Applicant argues that the CDRs of the antibody of Claim 94 are found in the antibody of SEQ ID NOS: 2 and 4. Applicant describes how the antibody of the claims could be made.

Applicant is advised that the rejections of Sections 4 and 5 of the Final Office action of 1/03/07 are for inadequate written description, not for lack of enablement. That it might be possible to produce the antibodies is irrelevant - Applicant has not shown possession of said antibodies. Further, no antibodies comprising the properties of Claims 100-107 are described at all.

Applicant argues that inherent properties need not be described.

It is unclear that any antibodies with the properties of the claims exist; certainly none are adequately described. There is no evidence that any antibody simply comprising the CDRs of SEQ ID NOS; 2 and 4 would comprise any particular structural or functional properties.

Applicant argues that the antibodies of the claims are contemplated by the present specification.

The claimed antibodies are not described by the instant specification.

Applicant describes the manipulation of CDRs to produce various antibodies.

Applicant's discussion of antibody manipulation does not comprise an adequate written description of the claimed antibodies.

Regarding the enablement rejection of Section 6, as set forth previously, no antibodies comprising just the CDRs of SEQ ID NOS: 2 and 4, further comprising the limitations of Claims 100-104 and 106 are disclosed. Further, absent a trial and error approach (which is not enabled) it is unclear how the claimed antibodies could be made.